



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 30, 2005

Ms. Jerris Penrod Mapes  
Assistant City Attorney  
Killeen Police Department  
402 North Second Street  
Killeen, Texas 76541-5298

OR2005-05820

Dear Ms. Mapes:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 227328.

The Killeen Police Department (the "department") received a request for a police investigation report regarding the death of a child. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

Initially, we note the submitted information pertains to an investigation of a death of a child. Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>1</sup> Gov't Code § 552.101. This exception encompasses information that another statute makes confidential. Chapter 261 of the Family Code is applicable to information that relates to reports and investigations of alleged or suspected child abuse or neglect. Section 261.201 provides in part:

- (a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for

---

<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions like sections 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a); *see also id.* § 261.001(1), (4) (definitions of abuse and neglect); Open Records Decision No. 440 at 2 (1986) (construing statutory predecessor to Fam. Code § 261.201). The submitted information consists of documents used or developed in an investigation of abuse or neglect. Therefore, we find that section 261.201(a) is applicable to the submitted information. You do not inform us of any rule adopted by the department that would permit the release of this information in this instance. We therefore assume that no such rule exists. Given that assumption, we conclude that the submitted information is excepted from disclosure in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code as information made confidential by law. As our ruling on this issue is dispositive, we need not address your remaining arguments.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the


Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

  
L. Joseph James  
Assistant Attorney General  
Open Records Division

LJJ/seg

Ref: ID# 227328

Enc. Submitted documents

c: Mr. Joseph C. Szafranski  
35 Road B  
Fort Stewart, Georgia 31314  
(w/o enclosures)